

AMENDMENTS to the DRAWINGS

No amendments or changes to the Drawings are proposed.

REMARKS

Rejections under 35 U.S.C. §112 and §101

With respect to the rejections under 35 U.S.C. §112 and §101, we appreciate the Examiner's withdrawal of some of these rejections in view of our after-final amendment, and we appreciate the Board's reversal of the remaining of these rejections in view of our Appeal Brief.

Nature of Amendment

In the present amendment, we have amended claims 1 - 4 and cancelled all other pending claims from further consideration in this application. We are not conceding that the subject matter encompassed by the newly cancelled claims prior to this Amendment are not patentable over the art cited by the Examiner.

Cancellation of these claims is made solely to facilitate expeditious prosecution of at least a portion of allowable subject matter in this application through focusing the examination on our automated method.

We respectfully reserve the right to pursue claims, including the subject matter encompassed by the cancelled claims, as present prior to this Amendment and additional claims in one or more continuing applications.

Rejections under 35 U.S.C. §103(a)

The Board sustained the rejections of claims 1 - 4 under §103(a) over Dinwoodie in view of Montgomery. In reading the decision, we note that the Board recognizes several distinctions between our claims and Dinwoodie's disclosure.

We believe they recognized our disclosure's term of "delay paced proxy bidding" and the difference our *disclosure* sets forth, as compared to a slightly different term used in our claims which can be interpreted in a manner to read on Dinwoodie's and Montgomery's disclosures. So, we have amended our claims to use the term "delay paced proxy bidding" in order to allow our claims to be interpreted directly in light of our specification.

We also believe that the Board recognized that Dinwoodie's bid *acceptance* delay value was under control of the *auctioneer*, not the bidders. But, our claims were less than specific regarding a limitation of the bidder control of the delay value. As such, we have amended our claims to specify that our counter-bid delay is *bidder*-controlled, not auctioneer-controlled.

And, the Board held that Montgomery's "time to close" parameter was the same as our "time-to-close" delay, but the Board did not find that Montgomery's "time to close" parameter is the same as a counter-bid delay parameter. This is probably because one parameter looks *forward* in time (e.g. to the time remaining to close of the auction), while the other looks

backward in time (e.g. to the time of the last posted bid). So, we have amended our claims to further refine the language to ensure that our backward-looking counter-bid delay is not confused with a forward-looking time-to-close parameter.

We also notice that in application of the *KSR* decision, the Board appeared to say that modification and combination of Dinwoodie and Montgomery's teachings to match our exact claim limitations would merely yield predictable results using old elements (e.g. the delay being old), thus it would *likely* be an obvious change to make to the teachings of Dinwoodie and Montgomery.

We believe that the converse is also supported by the decision in *KSR* – that unexpected and unpredictable results may be strong evidence of non-obviousness. Many times in the case of human-machine interactions, we believe that the human reaction to automatic machines may be unpredictable. What would logically or intuitively seem like a simple human-machine interface can evoke a very negative reaction from a human user. For example, many shopping web sites ask a user for their ZIP code. Supposedly, this was an innocent question needed by the web server in order to search product availability in the user's local stores. But, many users had an unexpected reaction of believing their browsing was being tracked, so they initially refused to continue shopping with those servers. So, programmers of such web sites quickly amended the pages to explain *why* the zip code is needed, which then caused a more favorably (and compliant) reaction from human users.

We believe our situation is one such case, where that our bid-placing proxy is part of a temporary community comprised of other bidders, where the other bidders likely include some human bidders. The interaction between the human bidders and the automated bidders in the auction community is somewhat unpredictable.

Our counter-bid delay is designed to avoid escalation of the pace of bidding by other participants in the auction, and to avoid taking the sense of excitement or adventure out of the process for the non-automated human bidders.

For example, if there are 20 active bidders in an auction, and two of them are equipped with automatic counter-bidders, then the two counter-bidders might immediately counter each other's bids at the speed allowed by the software and computers, thus rapidly escalating the current bid level to the maximum authorized bid of one or the other automatic proxy bidders. This would be undesirable, and our delay avoids that.

For the other 18 "human" bidders in this example, watching such rapid counter bidding may take the sense of adventure and hope of possibly winning the auction out of the process, causing them to withdraw from bidding, and in the long term, avoid joining other online auctions.

Dinwoodie's bid acceptance delay is set to a value *by the auctioneer* to protect their system from being "overrun" by rapid placement of bids (col. 6, lines 1 - 12). Our counter-bid

delay, however, is under control of the bidder, not the auctioneer, and is not a value to protect the auction system's ability to handle new bids, but is a value to avoid triggering a "frenzy" of counter-bidding by other bidders.

We believe that application of the decision in *KSR* supports a holding of non-obviousness in several ways:

- (1) *KSR* did not set aside or remove the basis of non-obviousness if a proposed change to a reference would render it undesirable for its intended purpose. We believe that if Dinwoodie's delay parameter were put under the control of a bidder, the bidder could set it to a value which would not adequately protect Dinwoodie's auction system from overrun. This would render Dinwoodie undesirable for its intended purpose. Thus, it would not be obvious to make this change.
- (2) More significantly, our delay value is set by the bidder to avoid escalation of bidding pace, not to protect the auction system from overrun, in order to avoid a bidding "frenzy" by human counter-bidders in the same auction. We believe our delay, as we have specified and claimed its use and operation, deals with the unpredictable behavior of other auction participants when it is unknown or unknowable if any of those other auction participants are humans, other automated proxies, or a combination of humans and automated proxies.
- (3) Finally, the synthesis of (1) and (2) yields conflicting interests. Research seems to indicate that it is usually to the auctioneer's advantage, and to the bidders' disadvantage, if a bidding frenzy occurs. This research shows that more often than not, the final bid price will be higher if a bidding frenzy occurs. So, it would not be a good idea for Dinwoodie's auctioneer to set their system-overrun protection bid-acceptance delay value any larger or longer than absolutely necessary to protect their auction equipment, otherwise, they begin to slow a possible bidding frenzy.

Conversely, bidders should not want to do anything to instigate or promote a bidding frenzy, lest they will end up being outbid or having to bid too much to win the auction. Thus, a bidder should not want an automated proxy's counter-bid delay to be too short or small, otherwise, their proxy agent might trigger a bidding frenzy.

We believe the decision in *KSR* supports a finding of non-obviousness in view of these aspects of our claims. As such, we ask for the Examiner's consideration of our amendment.

Supplemental IDS

In review of the Board's Decision and in preparation of our response, we researched what the current "thinking" about how bidders interact in an auction. We are attaching a supplemental Information Disclosure Statement which contains extrinsic evidence of the on-going analysis and debate about how humans and automated bidding proxies interact, negatively and positively, with each other in an auction environment. We believe it supports our arguments for non-obviousness, especially in view of the *KSR* decision.

Request for Indication of Allowable Subject Matter

We believe we have responded to all grounds of rejection, but if the Examiner disagrees, we would appreciate the opportunity to supplement our reply.

We believe the present amendment places the claims in condition for allowance. If, for any reason, it is believed that the claims are not in a condition for allowance, we respectfully request constructive recommendations per MPEP 707.07(j) II which would place the claims in condition for allowance without need for further proceedings. We will respond promptly to any Examiner-initiated interviews or to consider any proposed examiner amendments.

Respectfully,

/ Robert Frantz /

Robert H. Frantz
U.S. Patent Agent, Reg. N^o 42,553
Tel: (405) 812-5613
Franklin Gray Patents, LLC